

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RALEIGH POTTS, II, et al.,

Plaintiffs,

Civil Action No. 11-CV-15187

vs.

HON. BERNARD A. FRIEDMAN

ROBERT J. GREENWELL, et al.,

Defendants.

**ORDER DENYING DEFENDANT WALBERT TRUCKING, INC.'S
MOTION TO DISMISS and REJECTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AS MOOT**

This matter is presently before the Court on the motion of defendant Walbert Trucking, Inc., to dismiss the complaint for plaintiff's failure to comply with discovery order [docket entry 47]. The motion is denied because dismissal of the complaint would be an unduly harsh penalty. While dismissal of the complaint is one of the many potential sanctions the Court may impose upon a plaintiff who fails to obey a discovery order, *see* Fed. R. Civ. P. 37(b)(2)(A)(v), it is a drastic sanction which should be imposed only as a last resort and only upon a showing that plaintiff's failure to obey the Court's order was "due to willfulness, bad faith, or fault." *Universal Health Group v. Allstate Ins. Co.*, 703 F.3d 953, 956 (6th Cir. 2013), *quoting* *U.S. v. Reyes*, 307 F.3d 451, 458 (6th Cir.2002). Defendant has made no such showing. To the contrary, plaintiffs indicate in their response to this motion that they provided defendant's insurance carrier with all of the requested information before filing suit, and that they have since complied with the magistrate judge's order to provide defendant with a duplicate set of the same information. This representation stands un rebutted, as defendant has filed no reply to plaintiffs' response.

The magistrate judge has submitted a Report and Recommendation ("R&R") in

which she recommends that plaintiffs pay defense counsel \$600 in sanctions for failing to obey her discovery order. This recommendation is rejected as moot, plaintiffs having indicated in their response to defendant's motion to dismiss that they paid the sanction before the R&R was issued. Accordingly,

IT IS ORDERED that the motion of defendant Walbert Trucking, Inc., to dismiss the complaint [docket entry 47] is denied.

IT IS FURTHER ORDERED that Magistrate Judge Majzoub's R&R is rejected as moot.

S/ Bernard A. Friedman_____
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

Dated: August 22, 2014
Detroit, Michigan